

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

3 THEODORE LUCIO, et al.,)
4 Plaintiffs,)
5 vs.) No. 2:12-CV-00613
6 EDW. C. LEVY CO., et al.,) Judge Helmick
7 Defendants.)

8 - - -

9
10 DEPOSITION OF MALCOM DUNBAR

11 DATE: November 6, 2015 at 11:30 a.m.

12 PLACE: Gallon, Takacs, Boissoneault &
13 Schaffer
14 3516 Granite Circle
15 Toledo, Ohio 43617

16 REPORTER: Lauren Stamm
17 Notary Public

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1 APPEARANCES:

2 On behalf of the Plaintiffs:

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11 On behalf of the Defendant EDW. C. Levy Co.:

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I N D E X

EXAMINATION

	Page	Line
Witness: MALCOM DUNBAR		
Examination by Mr. Boissoneault.....	4	5

- - -

EXHIBITS

Exhibit	Description	Page	Line
PX 7	Fall Protection Standard.....	16	3

- - -

OBJECTIONS

Attorney	Page	Line
By Mr. Goldberg.....	18	16
By Mr. Goldberg.....	19	1
By Mr. Goldberg.....	19	11

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1 MALCOM DUNBAR,
2 a Witness herein, called by the Plaintiffs as if upon
3 examination, was by me first duly sworn, as hereinafter
4 certified, and deposed and said as follows:

5 EXAMINATION

6 BY MR. BOISSONEAULT:

7 Q. Mr. Dunbar, my name is Kevin Boissoneault, we
8 introduced ourselves a little bit earlier, you obviously
9 sat through the deposition of Mr. Miller and so you
10 certainly know how the process goes.

11 A. Sure.

12 Q. Is that fair to say?

13 A. Sure.

14 Q. Have you ever had your deposition taken
15 before?

16 A. I have.

17 Q. How many prior times would you say?

18 A. In recent years, once about eight years ago
19 and then several times probably about 25 years ago.

20 Q. And why several times 25 years ago?

21 A. The job that I had, I was a safety manager at
22 an underground coal operation and we had multiple hearings
23 regarding MSHA citations, so we would get deposed and have
24 to testify at those.

1 Q. And the eight years ago, the deposition?

2 A. Yeah, that was a contract dispute with one of
3 the contract haulers that was working for the Edward C.
4 Levy Company.

5 Q. And what is your post-high school education?

6 A. I have a bachelor's degree in business
7 management at Clara University in Ypsilanti, Michigan, and
8 I have a master's degree in occupational safety and health
9 with Oakland University in Auburn Hills, Michigan.

10 Q. And your current employer?

11 A. Edward C. Levy Company.

12 Q. And how long have you worked for Edward C.
13 Levy Company?

14 A. I started in February of 2003, so it's a
15 little bit over 12-and-a-half years.

16 Q. And where did you come from?

17 A. Prior to that I worked for a company called
18 FDR Safety in Nashville, Tennessee, I spent two years
19 there. And then prior to that I spent 26 years with
20 National Steel Corporation, 10 of which was in the steel
21 division and 18, or 16 years, I should say, is in the
22 underground mining, coal mining.

23 Q. Now, FDR in Nashville, what did you do there?

24 A. That is a training company, occupational

1 safety and health training, so I provided mostly leadership
2 type management training.

3 Q. Have you provided that kind of training for
4 management at any of the Edward C. Levy companies since
5 coming to work for them in 2003?

6 A. Yes.

7 Q. And does that include providing that kind of
8 occupational safety and health training to managers at the
9 mill services companies?

10 A. No, sir.

11 Q. Who does that involve providing that training
12 to?

13 A. Don't understand the question, I'm sorry.

14 Q. Who do you provide such training to while
15 working for Edward C. Levy Company, which management?

16 A. Generally the executive management and then
17 we'll get into some of the field managers, if you will.

18 Q. When you say field managers, who is that?

19 A. Like the Brian Lasleys of the world, the Dan
20 Mergens of the world, those executive VPs.

21 Q. And then what do they do with that knowledge?

22 A. They use to it run their organizations.

23 Q. What's Brian Lasley's position?

24 A. He's vice president of operations for Steel

1 Mill Services, USA.

2 Q. Okay. And Steel Mill Services, USA
3 encompanies [sic] -- or, Steel Mill Services includes what,
4 which companies?

5 A. Companies?

6 Q. Levy Environmental?

7 A. Yeah, Levy Environmental Services, which is
8 like Fulton Mill Service, and there's probably about eight
9 other or nine other companies similar to that.

10 Q. Did you have any involvement with slag mills
11 prior to coming to work for Edward C. Levy Company?

12 A. I did not.

13 Q. You mentioned the Brian Lasleys and somebody
14 else of the world?

15 A. Dan Mergens, he runs our asphalt aggregate
16 group.

17 Q. And so you would be involved in training
18 Brian, am I saying that right, Lasley?

19 A. Correct.

20 Q. From an occupational safety and health
21 standpoint?

22 A. That's correct.

23 Q. And then he would use that training to train
24 the safety people at the various companies conducting mill

1 services for Edward C. Levy Company; is that correct?

2 A. As far as I know, yes, Kevin.

3 Q. Okay. Well, his world, his operations are the
4 steel mill services, correct?

5 A. That's correct.

6 Q. And so he would be responsible for making sure
7 that the, that the safety folks at those steel mill
8 services companies were properly trained in safety; is that
9 fair to say?

10 A. That's fair to say.

11 Q. All right. And how does, well, Rock Miller's
12 role was working for Mr. Lasley or his predecessor or
13 successor; is that correct?

14 A. That's correct.

15 Q. Okay. Have you ever been to North Star
16 Bluescope in Delta?

17 A. I have been to Fulton Mill Service, yes.

18 Q. Okay. Have you been in the actual North Star
19 plant?

20 A. If it's North Star Bluescope, no, I have not
21 been in the North Star Bluescope plant.

22 Q. Okay. So when you've been out to North Star
23 Bluescope Steel you've just been out on the perimeter
24 property, primarily in the, would be the southeast corner

1 where the slag mill is?

2 A. I don't know the geography, I've been to the
3 Fulton Mill Service location.

4 Q. Okay. And when you say Fulton Mill Service,
5 what does that consist of?

6 A. It consists of a slag plant and dumping
7 stations and office building.

8 Q. All right. And are you familiar by either
9 photographs or other knowledge or the drawings for the slag
10 plant, are you familiar with the components of the slag
11 plant?

12 A. I've seen the drawings, I've seen the
13 pictures.

14 Q. Okay. Have you seen them prior to this case?

15 A. No.

16 Q. Are you able to describe the operation at the
17 slag plant?

18 A. Just on a very high level basis, I know what
19 they do.

20 Q. Okay. So like a 30,000 foot picture of it?

21 A. I know they take molten slag and they process
22 it into finish material.

23 Q. Okay. You, had you been down to the Fulton
24 Mill prior to this incident?

1 A. In the office building, yes.

2 Q. Okay. And on how many prior occasions would
3 you say?

4 A. Probably once a year, so probably five times.

5 Q. And is that part of the road show?

6 A. Yes.

7 Q. And does that road show have documentation
8 with it?

9 A. We put together a PowerPoint presentation for
10 the road shows.

11 Q. Are there videos involved?

12 A. Generally no.

13 Q. And do you have that PowerPoint presentation?

14 A. I would have to go look.

15 Q. Okay. You would assume you would, right?

16 A. I would assume I would, yeah.

17 Q. When was the last time that was put on?

18 A. We do one every year.

19 Q. Okay.

20 A. So we're finishing up this year.

21 Q. So have you done one recently at North Star?

22 A. At North Star, couldn't tell you for sure.

23 Q. Well --

24 A. I've had 24 of them in the course of a year,

1 so...

2 Q. Okay. Have you been to lovely Delta, Ohio in
3 the last couple months?

4 A. Not in the last couple months, no.

5 Q. All right. So presumably, do you use the same
6 materials, the same PowerPoint for each of the 24?

7 A. No, it varies by year.

8 Q. Do you keep the old ones?

9 A. Yes, for several years.

10 Q. Okay. So if I asked counsel to get me all the
11 ones you have, you would certainly have this year's and a
12 few years back?

13 A. Should, I should have them, yes.

14 Q. Is that, the way you're answering the
15 question, I mean --

16 A. Well, I'm not sure, I don't keep a record of
17 how many records that I keep, I'll keep a couple years and
18 then we'll start to clear out the computer space.

19 Q. Right.

20 A. Because it takes up computer space.

21 Q. Do you have this on a laptop?

22 A. We have this on a laptop, yes.

23 Q. All right. And so do you have your laptop in
24 your vehicle?

1 A. I do not have my laptop in my vehicle.

2 Q. Okay. But you clearly have in your laptop
3 back at your office or at your house the current version of
4 the road show --

5 A. Absolutely.

6 Q. -- PowerPoint?

7 A. Yes.

8 Q. So we know that you have that?

9 A. Yes.

10 Q. So we know that you could provide that?

11 A. Yes.

12 Q. And then the question is how many prior
13 versions you have, correct?

14 A. That's the question, yes.

15 Q. All right. Now, besides the PowerPoint, are
16 there any handouts?

17 A. Generally, no.

18 Q. And who sits through the road show?

19 A. The leadership of the site where we're doing
20 the road show.

21 Q. Okay. And what's the purpose of the road
22 show?

23 A. What we've used that for is to show the
24 leadership what our statistical performance is for safety,

1 how are we doing, what's our incident rates and then what,
2 if any, corporate goals that we might have for that year,
3 we do that in the explanation there and then we might get
4 into one or two different topics, like engagement or risk
5 assessment or something like that.

6 Q. Okay. You're not involved in annual safety
7 inspections?

8 A. I am not.

9 Q. Okay. And you're probably involved at a
10 higher level, but you're not involved in the walking around
11 the mills?

12 A. That's correct.

13 Q. Is that fair to say?

14 A. That's fair to say.

15 Q. You did an affidavit recently, in August, I
16 think, and you mentioned in your affidavit something to the
17 effect that you don't think that guardrails are used on
18 screen decks of other slag plants in the industry?

19 A. That is correct.

20 Q. What's the basis for that statement?

21 A. Well, I ran purchasing for several years,
22 actually for 10 years at Levy.

23 Q. Okay.

24 A. And we purchased a couple slag plants during

1 that time period and none of them came configured with any
2 handrails on there, and then any of the visits that I've
3 ever been out to the sites and ever talked since the
4 incident with the anybody, nobody has ever had handrails
5 around that.

6 Q. Around screen decks?

7 A. Right.

8 Q. Did they have tie-off points?

9 A. I didn't ask that question.

10 Q. The structure of the tower 2, the involved
11 tower in this case, that's steel beams, right?

12 A. Yeah, to my knowledge, yes.

13 Q. There's, you know, there's foundations, I
14 think there's four foundations, and then there's beams that
15 run up, columns that run up and then beams that form a
16 structure; is that your understanding?

17 A. That's my understanding.

18 Q. And then connected to that structure would be
19 the stairs and platforms that take people from the bottom
20 to the top of that structure; is that correct?

21 A. Correct.

22 Q. And then there is a screen deck and a, I guess
23 there's a crusher down below on tower 2?

24 A. I have no idea.

1 Q. All right. And, but the screen deck, is that
2 attached to the, to the frame, the structure of tower 2?

3 A. You would have to assume it is, I'm not an
4 engineer, Kevin, I didn't put the plant together so I don't
5 know.

6 Q. Okay. Is, to your knowledge based on your
7 training, is that slag mill or the slag mill towers exempt
8 from OSHA requirements?

9 A. They are not exempt, no.

10 Q. And so you haven't had any engineers tell you
11 that you couldn't connect a guardrail to the steel
12 structure that makes up tower 2; is that correct?

13 A. I've not asked that question.

14 Q. Okay. So in fairness, you don't know whether
15 you could simply connect a guardrail to the steel structure
16 on the sides of the screen deck on tower 2?

17 A. Not from my training and knowledge, no.

18 Q. Okay. Because if you could fabricate and
19 connect a guardrail around the screen deck, or at least the
20 vulnerable parts of the screen deck, according to Edward C.
21 Levy Company safety rules and regulations, that's exactly
22 what you would do first from a safety standpoint; isn't
23 that true?

24 A. Phrase it for me again, Kevin, I'm sorry, I

1 don't know what you're getting at with that question, I'm
2 trying to understand.

3 Q. Okay. The, as I read the fall protection
4 rules for Edward C. Levy Company Steel Mill Services, I
5 read the following on page 3 of exhibit, I think it's
6 number 7 or 8 right there, the one you got there. What's
7 the exhibit number on that, lower left-hand corner there?

8 A. Plaintiff's 7.

9 Q. Okay. And then on page 3, and I'm looking at
10 the first column under general procedures, 12.1.

11 A. Uh-huh.

12 Q. About midway through.

13 A. Uh-huh.

14 Q. "Engineering methods, including guardrails or
15 scaffolds, are to be used first." Then if we go back up at
16 the beginning, let's go ahead and read the whole thing. "A
17 thorough understanding of the fall hazards in your
18 workplace is the first step to fall prevention." You would
19 agree with that, right?

20 A. Absolutely.

21 Q. And then it says, "Once potential fall hazards
22 are identified, steps to eliminate or control them will
23 occur," do you see that?

24 A. Yes.

1 Q. And then it says, "Engineering methods,
2 including guardrails or scaffolds, are to be used first."
3 Do you see that?

4 A. I do.

5 Q. And then, "If engineering controls are not
6 possible, personal fall protection will be used."

7 A. That's correct.

8 Q. All right. Now, so if one is following the
9 Edward C. Levy Company fall protection standards, one would
10 first seek to provide a guardrail if one can be engineered,
11 is that correct?

12 A. That is basic safety hierarchy of controls,
13 yes.

14 Q. And you're familiar with that?

15 A. Absolutely.

16 Q. And you've been trained and taught that?

17 A. Yes.

18 Q. All right. So what you're telling me is, to
19 your knowledge, as the vice president of corporate safety
20 for Edward C. Levy Company, to your knowledge no
21 engineering determination or analysis has been done to
22 determine whether or not a guardrail can be placed around
23 the screen deck on tower 2; is that correct?

24 A. No, what I've said is I've never asked that

1 question, whether or not the engineering has been done.

2 Q. All right. As the head of corporate safety
3 for Edward C. Levy Company, are you aware of any such
4 engineering analysis having been done to date?

5 A. I am not.

6 Q. And are you aware of any having been done
7 since this incident involving Ted Lucio?

8 A. I am not, I'm not aware of it.

9 Q. Okay. And so at this point in time Edward C.
10 Levy, if Edward C. Levy Company has not done such an
11 engineering analysis to determine whether a guardrail can
12 be put up on the screen deck on tower 2 at its facility at
13 North Star Bluescope steel in Delta, Ohio, they would be in
14 violation of their own fall protection standards; isn't
15 that correct?

16 MR. GOLDBERG: Objection. You can
17 answer.

18 THE WITNESS: That's not correct.

19 BY MR. BOISSONEAULT:

20 Q. Why is that not correct?

21 A. Because responsibility to look at that also
22 resides with Levy Environmental Services.

23 Q. Which is a wholly owned company of Edward C.
24 Levy Company; is that correct?

1 MR. GOLDBERG: Objection, if you know.

2 THE WITNESS: I don't know.

3 BY MR. BOISSONEAULT:

4 Q. Okay. Well, that's easy enough to find out?

5 A. Yeah, we can find that out, absolutely.

6 Q. It's certainly your belief that it is,
7 correct?

8 A. That's correct.

9 Q. All right. And, in fact, same people sit on
10 the boards of both companies, correct?

11 MR. GOLDBERG: Objection, if you know.

12 THE WITNESS: I have no idea.

13 BY MR. BOISSONEAULT:

14 Q. Okay. The Edward C. Levy Company Steel Mill
15 Service fall protection standards were provided to
16 Mr. Lucio, correct?

17 A. I don't know that as a fact.

18 Q. The, all of the other documents, well, let's
19 not say all the other documents, let me say the documents
20 that include the Edward C. Levy Company safety department
21 "dedicated to safe production" and the "safety is
22 everyone's business" from Edward C. Levy Company, those
23 were provided to Mr. Lucio, correct, he signed for them
24 when he signed?

1 A. Well, yeah, I see his signature on them, yes.

2 Q. Sure. And the Edward C. Levy Company Mini
3 Mill Division documents were also provided to him and
4 signed for by him as was the Levy steel mill services
5 cardinal rules; is that correct, and the Levy safety rules
6 and safety manual was provided to him and signed for by
7 him?

8 A. Has his signature on it, yes, sir.

9 Q. All right. And the Exhibit 7, Edward C. Levy
10 Company Steel Mill Service fall protection, that's taken
11 right from the manual, correct?

12 A. I don't know if that's taken from the manual
13 or if that's a separate document.

14 MR. GOLDBERG: We'll stipulate it's
15 taken, I mean, the pages seem to match up, Kevin.

16 BY MR. BOISSONEAULT:

17 Q. Okay. And the document, Exhibit 7, is Edward
18 C. Levy Company Steel Mill Service, so it is, fall
19 protection?

20 A. Yes.

21 Q. So it is intended for, it is intended to be
22 the standards for fall protection at Edward C. Levy's
23 facility at North Star Steel, is that correct?

24 A. It is the information that is given to Fulton

1 Mill Service, yes.

2 Q. Well, again, let's be clear, Exhibit 7, the
3 Edward C. Levy Company Steel Mill Services fall protection
4 document covers Edward C. Levy Company's Steel Mill
5 Services, correct?

6 A. Correct.

7 Q. And that would include their facility at North
8 Star Bluescope Steel, correct?

9 A. Correct.

10 Q. And that would govern fall protection at
11 Levy's facility at North Star Bluescope Steel, correct?

12 A. That is correct.

13 Q. All right. And so if a requirement of the
14 fall protection standard is not being followed, that would
15 be a violation of that standard; isn't that correct?

16 A. If it's not being followed it's not following
17 the standard.

18 Q. Okay. Did you know Ted Lucio?

19 A. I did not.

20 Q. I guess I should say, do you know Ted Lucio?

21 A. No, either way, I don't know him.

22 Q. All right. You didn't talk to OSHA in
23 connection with this matter, did you?

24 A. Did not.

1 Q. And you didn't provide any information to OSHA
2 regarding this matter?

3 A. I did not.

4 Q. And to your knowledge, Rock Miller did talk
5 with OSHA regarding this matter?

6 A. I don't know, Kevin.

7 Q. Do you deal with anybody from the, well,
8 anybody at all at North Star Bluescope Steel?

9 A. I do not.

10 Q. That's somebody below you that would
11 communicate with them?

12 A. Mr. Lasley, Brian Lasley communicates with
13 them.

14 Q. And who is his employer, Brian Lasley?

15 A. I would assume it's the Edward C. Levy
16 Company.

17 Q. And does he travel around then too as part of
18 his job?

19 A. Yes.

20 Q. To all the mill services locations?

21 A. Yes.

22 Q. Are there any overseas mill services
23 locations?

24 A. There are.

1 Q. Does he get to go to those?

2 A. No.

3 Q. You have people that are over there?

4 A. Yeah, we have a vice president of Steel Mill
5 Services International.

6 Q. Okay. And what's that person's name?

7 A. Clyde Kirkwood.

8 Q. And where is Mr. Kirkwood out of, where's his
9 office?

10 A. In Dearborn.

11 Q. Okay. So he gets to fly all over the world?

12 A. Yes, sir.

13 Q. Who do you report to?

14 A. I report to S. Evan Weiner, W-e-i-n-e-r.

15 Q. Okay. And he's the co-big shot, right?

16 A. He's our chief operating officer, yes.

17 Q. And then there is a Levy that is the chief
18 executive officer?

19 A. That's Edward C. Levy, Jr.

20 Q. Junior, was it his father that started it or
21 grandfather?

22 A. His father that started it.

23 Q. Okay. How old is Mr. Levy, Jr.?

24 A. I don't know for sure, he's in his 80s, I

1 believe.

2 Q. Okay. Does he still come in every day?

3 A. Every day.

4 Q. Did you have any input into Exhibit 7?

5 A. I did not.

6 Q. What about the safety manual?

7 A. I did not.

8 MR. BOISSONEAULT: I think those are
9 all the questions I have.

10 MR. TICKNOR: I have no questions.

11 MR. GOLDBERG: Do you want to reserve
12 signature as you heard what I explained to Rock,
13 do you want to reserve signature and you can
14 always waive it later or do you want to waive it
15 now, it's up to you.

16 THE WITNESS: I would like to see it
17 before we go.

18 MR. GOLDBERG: Okay. It won't happen
19 today, but before it becomes an official part of
20 the record in the case you have a chance to see
21 it, okay. Thank you.

22 (Deposition concluded and witness
23 excused at 12:00 p.m.)

24 (Signature reserved.)

SIGNATURE PAGE

Date of Deposition: November 6, 2015

Correction page(s) enclosed? Yes ____ No ____

How many correction pages? _____

MALCOM DUNBAR Date

- - -

Please return this signed signature page
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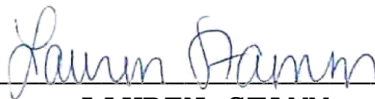
C E R T I F I C A T E

I, Lauren Stamm, a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given was by me reduced to stenotype in the presence of said witness and afterwards transcribed; that the foregoing is a true and correct transcription of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee of or attorney for any of the parties in this action; that I am not a relative or employee of an attorney of any of the parties in this action; that I am not financially interested in this action, nor am I or the court reporting firm with which I am affiliated under a contract as defined in the applicable civil rule.

1 IN WITNESS WHEREOF, I have hereunto set my
2 hand and affixed my seal of office at Toledo, Ohio on this
3 13th day of November 2015.

4
5
6 

7 LAUREN STAMM
8 Notary Public

9 In and for the State of Ohio

10 My Commission expires December 5, 2020
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<div><div>A</div><div>able 9:16 absolutely 12:5 16:20 17:15 19:5 action 26:17,18,19 actual 8:18 affidavit 13:15,16 affiliated 26:20 affixed 27:2 aforesaid 26:7,11 aggregate 7:15 ago 4:18,19,20 5:1 agree 16:19 ahead 16:16 al 1:3,6 analysis 17:21 18:4,11 annual 13:6 answer 18:17 answering 11:14 anybody 14:4 22:7,8 APPEARANCES 2:1 applicable 26:21 asked 11:10 15:13 17:24 asphalt 7:15 assessment 13:5 assume 10:15,16 15:3 22:15 attached 15:2 attorney 3:10 26:16,18 Auburn 5:9 August 13:15 aware 18:3,6,8 a.m 1:11</div></div>	<div><div>chief 23:16,17 Circle 1:13 2:4 citations 4:23 civil 26:21 Clara 5:7 clear 11:18 21:2 clearly 12:2 Clyde 23:7 coal 4:22 5:22 COLLINS 25:20 Columbus 2:9 column 16:10 columns 14:15 come 5:16 24:2 coming 6:5 7:11 Commission 27:9 commissioned 26:4 communicate 22:11 communicates 22:12 companies 6:4,9 7:4,5,9,24 8:8 19:10 company 5:4,11,13,17,24 6:15 7:11 8:1 15:21 16:4 17:9,20 18:3,10,23 18:24 19:14,20,22 20:2,10,18 21:3 22:16 Company's 21:4 components 9:10 computer 11:18,20 concluded 24:22 conducting 7:24 configured 14:1 connect 15:11,15,19 connected 14:18 connection 21:23 consist 9:5 consists 9:6 contract 5:2,3 26:21 control 16:22 controls 17:5,12 corner 8:24 16:7 corporate 13:2 17:19 18:2 Corporation 5:20 correct 7:19,22 8:1,4,5,13,14 12:13 13:12,19 14:20,21 15:12 17:7,11 17:23 18:15,18,20,24 19:7,8,10,16 19:23 20:5,11,23 21:5,6,8,9,11,12 21:15 26:10 correction 25:3,4,18 counsel 11:10 couple 11:3,4,17 13:24 course 10:24 court 1:1 26:20 covers 21:4 co-big 23:15 crusher 14:23 current 5:10 12:3</div></div>	<div><div>degree 5:6,8 Delta 8:16 11:2 18:13 department 19:20 deposed 4:4,23 deposition 1:10 4:9,14 5:1 24:22 25:2 26:12 describe 9:16 Description 3:6 determination 17:21 determine 17:22 18:11 different 13:4 DINSMORE 2:8 dispute 5:2 DISTRICT 1:1,1 division 1:2 5:21 20:3 document 20:13,17 21:4 documentation 10:7 documents 19:18,19,19 20:3 doing 12:19 13:1 drawings 9:9,12 duly 4:3 26:4,5 dumping 9:6 Dunbar 1:10 3:3 4:1,7 25:7</div><div>E</div><div>E 2:8 3:1 26:1,1 earlier 4:8 EASTMAN 2:12 easy 19:4 education 5:5 EDW 1:6 2:11 Edward 5:3,11,12 6:4,15 7:11 8:1 15:20 16:4 17:9,20 18:3,9,10,23 19:14,20,22 20:2,9,17,22 21:3,4 22:15 23:19 effect 13:17 eight 4:18 5:1 7:8 either 9:8 21:21 eliminate 16:22 employee 26:16,17 employer 5:10 22:14 enclosed 25:3 encompanies 7:3 engagement 13:4 engineer 15:4 engineered 17:10 engineering 16:14 17:1,5,21 18:1,4 18:11 engineers 15:10 Environmental 7:6,7 18:22 et 1:3,6 Evan 23:14 everyone's 19:22 exactly 15:21 examination 3:2,3 4:3,5 excused 24:23 executive 6:16,20 23:18 exempt 15:7,9 exhibit 3:6 16:5,7 20:9,17 21:2 24:4 EXHIBITS 3:5 expires 27:9 explained 24:12 explanation 13:3</div><div>F</div><div>F 26:1 fabricate 15:18 facility 18:12 20:23 21:7,11 fact 19:9,17 fair 4:12 8:9,10 13:13,14</div></div>	<div><div>fairness 15:14 fall 3:6 16:3,17,18,21 17:6,9 18:14 19:15 20:10,18,22 21:3,10,14 familiar 9:8,10 17:14 far 8:2 father 23:20,22 FDR 5:18,23 February 5:14 field 6:17,18 financially 26:19 find 19:4,5 finish 9:22 finishing 10:20 firm 26:20 first 4:3 15:22 16:10,15,18 17:2,10 26:5 five 10:4 Floor 2:13 fly 23:11 folks 8:7 followed 21:14,16 following 16:5 17:8 21:16 follows 4:4 foot 9:20 foregoing 26:9,13 form 14:15 foundations 14:13,14 four 14:14 frame 15:2 Fulton 7:8 8:17 9:3,4,23 20:24 further 26:12,15</div><div>G</div><div>Gallon 1:12 2:3 general 16:10 Generally 6:16 10:12 12:17 geography 9:2 getting 16:1 given 20:24 26:8,11 go 10:14 16:15,16 23:1 24:17 goals 13:2 goes 4:10 Goldberg 2:13 3:10,11,11 18:16 19:1 19:11 20:14 24:11,18 govern 21:10 grandfather 23:21 Granite 1:13 2:4 group 7:16 guardrail 15:11,15,19 17:10,22 18:11 guardrails 13:17 16:14 17:2 guess 14:22 21:20</div><div>H</div><div>hand 27:2 handouts 12:16 handrails 14:2,4 happen 24:18 haulers 5:3 hazards 16:17,21 head 18:2 health 5:8 6:1,8 7:20 heard 24:12 hearings 4:22 Helmick 1:6 hereinafter 4:3 hereunto 27:1 hierarchy 17:12 high 9:18 higher 13:10 Hills 5:9</div></div>
<div><div>B</div><div>bachelor's 5:6 back 11:12 12:3 16:15 based 15:6 basic 17:12 basis 9:18 13:20 beams 14:11,14,15 beginning 16:16 behalf 2:2,6,11 belief 19:6 believe 24:1 bit 4:8 5:15 Bluescope 2:6 8:16,20,21,23 18:13 21:8,11 22:8 boards 19:10 Boissoneault 1:12 2:3,3 3:3 4:6,7 18:19 19:3,13 20:16 24:8 bottom 14:19 Boulevard 2:9 Brian 6:19,23 7:13,18 22:12,14 building 9:7 10:1 business 5:6 19:22</div></div>	<div><div>C</div><div>C 1:6 2:11 5:3,11,12 6:4,15 7:11 8:1 15:20 16:4 17:9,20 18:3,9,10,23 19:14,20,22 20:2,9,18,22 21:3,4 22:15 23:19 26:1,1 called 4:2 5:17 caption 26:13 cardinal 20:5 case 9:14 14:11 24:20 cause 26:7 certainly 4:10 11:11 19:6 certified 4:4 certify 26:5,12,15 chance 24:20 Charles 2:8</div></div>	<div><div>D</div><div>D 3:1 Dan 6:19 7:15 date 1:11 18:4 25:2,7 day 24:2,3 27:3 deal 22:7 Dearborn 23:10 December 27:9 deck 14:22 15:1,16,19,20 17:23 18:12 decks 13:18 14:6 dedicated 19:21 Defendant 2:6,11 Defendants 1:7 defined 26:21</div></div>	

house 12:3 Huron 25:20			
I	M	organizations 6:22 OSHA 15:8 21:22 22:1,5 overseas 22:22 owned 18:23	R
idea 14:24 19:12 identified 16:22 III 2:8 incident 9:24 13:1 14:4 18:7 include 6:7 19:20 21:7 includes 7:3 including 16:14 17:2 industry 13:18 information 20:24 22:1 input 24:4 inspections 13:7 intended 20:21,21 interested 26:19 International 23:5 introduced 4:8 involve 6:11 involved 7:17 10:11 13:6,9,10 14:10 involvement 7:10 involving 18:7	making 8:6 MALCOM 1:10 3:3 4:1 25:7 management 5:7 6:2,4,15,16 manager 4:21 managers 6:8,17,18 manual 20:6,11,12 24:6 master's 5:8 match 20:15 material 9:22 materials 11:6 matter 21:23 22:2,5 mean 11:15 20:15 mentioned 7:13 13:16 Mergens 6:20 7:15 methods 16:14 17:1 Michigan 5:7,9 midway 16:12 mill 6:9 7:1,2,3,8,24 8:4,7,17 9:1,3,4 9:24 15:7,7 16:4 19:14 20:3,4,10 20:18 21:1,3,4 22:20,22 23:4 Miller 4:9 22:4 Miller's 8:11 mills 7:10 13:11 Mini 20:2 mining 5:22,22 molten 9:21 months 11:3,4 MSHA 4:23 multiple 4:22	P page 3:3,6,10 16:5,9 25:1,17 pages 20:15 25:4 page(s) 25:3,18 part 10:5 22:17 24:19 parties 26:16,18 parts 15:20 people 7:24 14:19 19:9 23:3 performance 12:24 perimeter 8:23 period 14:1 personal 17:6 person's 23:6 photographs 9:9 Phrase 15:24 picture 9:20 pictures 9:13 place 1:12 26:13 placed 17:22 Plaintiffs 1:4 2:2 4:2 Plaintiff's 16:8 plant 8:19,21 9:6,10,11,17 15:4 plants 13:18,24 platforms 14:19 Please 25:17 point 18:9 points 14:8 position 6:23 possible 17:6 post-high 5:5 potential 16:21 PowerPoint 10:9,13 11:6 12:6,15 predecessor 8:12 presence 26:8 presentation 10:9,13 president 6:24 17:19 23:4 presumably 11:5 prevention 16:18 primarily 8:24 prior 4:17 5:17,19 7:11 9:14,24 10:2 12:12 probably 4:19 7:8 10:4,4 13:9 procedures 16:10 process 4:10 9:21 production 19:21 properly 8:8 property 8:24 protection 3:6 16:3 17:6,9 18:14 19:15 20:10,19,22 21:3,10,14 provide 6:14 12:10 17:10 22:1 provided 6:1,3 19:15,23 20:3,6 providing 6:7,11 Public 1:15 26:3 27:7 purchased 13:24 purchasing 13:21 purpose 12:21 put 10:9,17 15:4 18:12 PX 3:6 p.m 24:23	R 26:1 ran 13:21 rates 13:1 read 16:3,5,16 record 11:16 24:20 records 11:17 reduced 26:8 regarding 4:23 22:2,5 regulations 15:21 relative 26:16,17 report 23:13,14 REPORTER 1:15 reporting 25:20 26:20 requirement 21:13 requirements 15:8 reserve 24:11,13 reserved 24:24 resides 18:22 responsibility 18:21 responsible 8:6 return 25:17 right 7:18 8:11 9:8 10:15 11:5,19,23 12:15 14:7,11 15:1 16:6,19 17:8,18 18:2 19:9 20:9,11 21:13,22 23:15 risk 13:4 road 10:5,7,10 12:4,18,20,21 Rock 8:11 22:4 24:12 role 8:12 rule 26:21 rules 15:21 16:4 20:5,5 run 6:22 14:15,15 runs 7:15
J	N	Q	S
J 2:3,13 job 4:21 22:18 Jr 23:19,23 Judge 1:6 Junior 23:20	N 3:1 name 4:7 23:6 Nashville 5:18,23 National 5:20 Nationwide 2:9 never 17:24 nine 7:9 North 2:6 8:15,18,20,21,22 10:21,22 18:13 20:23 21:7,11 22:8 25:20 NORTHERN 1:1 Notary 1:15 26:3 27:7 November 1:11 25:2 27:3 number 16:6,7	qualified 26:4 question 6:13 11:15 12:12,14 14:9 15:13 16:1 18:1 questions 24:9,10	S 23:14 safe 19:21 safety 4:21 5:8,18 6:1,8 7:20,24 8:7,8 12:24 13:6 15:21,22 17:12,19 18:2 19:20,21 20:5,6 24:6 sat 4:9 saying 7:18 says 16:21 17:1 scaffolds 16:15 17:2 Schaffer 1:13 2:3 school 5:5 screen 13:18 14:6,22 15:1,16,19,20 17:23 18:12 SeaGate 2:13 seal 27:2 see 16:23 17:3 20:1 24:16,20 seek 17:10 seen 9:12,12,14 separate 20:13 Service 7:8 8:17 9:3,4 19:15 20:10,18 21:1 25:20 services 6:9 7:1,2,3,7 8:1,4,8 16:4 18:22 20:4 21:3,5 22:20,22 23:5 set 27:1 SHOHL 2:8 shot 23:15 show 10:5,7 12:4,18,20,22,23 shows 10:10 sic 7:3 sides 15:16 signature 20:1,8 24:12,13,24 25:1,17 signed 19:23,24 20:4,6 25:17 similar 7:9 simply 15:15 sir 6:10 20:8 23:12
K	O		
keep 11:8,16,17,17 Kevin 2:3 4:7 8:2 15:4,24 20:15 22:6 kind 6:3,7 Kirkwood 23:7,8 know 4:10 8:2 9:2,18,21 12:8,10 14:13 15:5,14 16:1 19:1,2,11,17 20:12 21:18,20,21 22:6 23:24 knowledge 6:21 9:9 14:12 15:6,17 17:19,20 22:4	Oakland 5:9 Objection 18:16 19:1,11 OBJECTIONS 3:9 obviously 4:8 occasions 10:2 occupational 5:8,24 6:8 7:20 occur 16:23 office 9:7 10:1 12:3 23:9 27:2 officer 23:16,18 official 24:19 Ohio 1:1,14 2:4,9,14 11:2 18:13 25:21 26:4 27:2,8 okay 7:2 8:3,15,18,22 9:4,14,20,23 10:2,15,19 11:2,10 12:2,21 13:6,9 13:23 15:6,14,18 16:3,9 18:9 19:4 19:14 20:17 21:18 23:6,11,15,23 24:2,18,21 old 11:8 23:23 once 4:18 10:4 16:21 ones 11:8,11 operating 23:16 operation 4:22 9:16 operations 6:24 8:3		
L			
laptop 11:21,22,23 12:1,2 Lasley 7:18 8:12 22:12,12,14 Lasleys 6:19 7:13 Lasley's 6:23 Lauren 1:15 26:3 27:7 leadership 6:1 12:19,24 left-hand 16:7 let's 16:16 19:18 21:2 level 9:18 13:10 Levy 1:6 2:11 5:4,11,13 6:4,15 7:6,7 7:11 8:1 13:22 15:21 16:4 17:9,20 18:3,10,10,22,24 19:14,20,22 20:2 20:4,5,9,18 21:3,4 22:15 23:17,19 23:23 Levy's 20:22 21:11 Line 3:3,6,10 little 4:8 5:15 LLP 2:8 location 9:3 locations 22:20,23 long 5:12 look 10:14 18:21 looking 16:9 lovely 11:2 lower 16:7 LS15-3413 25:22 Lucio 1:3 18:7 19:16,23 21:18,20			

<p> sit 19:9 site 12:19 sites 14:3 sits 12:18 slag 7:10 9:1,6,9,10,17,21 13:18,24 15:7,7 SMITH 2:12 somebody 7:13 22:10 sorry 6:13 15:24 southeast 8:24 space 11:18,20 specified 26:14 spent 5:18,19 stairs 14:19 Stamm 1:15 26:3 27:7 standard 3:6 21:14,15,17 standards 17:9 18:14 19:15 20:22 standpoint 7:21 15:22 Star 2:6 8:15,18,20,21,22 10:21,22 18:13 20:23 21:8,11 22:8 start 11:18 started 5:14 23:20,22 State 26:4 27:8 statement 13:20 STATES 1:1 stations 9:7 statistical 12:24 steel 2:7 5:20,20 6:24 7:2,3 8:4,7,23 14:11 15:11,15 16:4 18:13 19:14 20:4,10,18,23 21:3,4,8,11 22:8 23:4 stereotype 26:8 step 16:18 steps 16:22 stipulate 20:14 Street 25:20 structure 14:10,16,18,20 15:2,12,15 Stuart 2:13 successor 8:13 Suite 2:9 sure 4:11,13 8:6 10:22 11:16 20:2 23:24 sworn 4:3 26:6 </p>	<p> top 14:20 topics 13:4 tower 14:10,11,23 15:2,12,16 17:23 18:12 towers 15:7 train 7:23 trained 8:8 17:16 training 5:24 6:1,2,3,8,11,14 7:17,23 15:7,17 transcribed 26:9 transcription 26:10 travel 22:17 true 15:23 26:10 truth 26:6,6,7 trying 16:2 two 5:18 13:4 type 6:2 </p>	<p> Y yeah 5:2 7:7 10:16 14:12 19:5 20:1 23:4 year 10:4,18,20,24 11:7 13:2 years 4:18,18,19,20 5:1,15,18,19,21 11:9,12,17 13:21,22 year's 11:11 Ypsilanti 5:7 </p>
<p> T T 26:1,1 Takacs 1:12 2:3 take 9:21 14:19 taken 4:14 20:10,12,15 26:13 takes 11:20 talk 21:22 22:4 talked 14:3 taught 17:16 Ted 18:7 21:18,20 tell 10:22 15:10 26:6 telling 17:18 Tennessee 5:18 testify 4:24 testimony 26:7,10 Thank 24:21 THEODORE 1:3 thing 16:16 think 13:16,17 14:14 16:5 24:8 thorough 16:17 Ticknor 2:8 24:10 tie-off 14:8 time 10:17 14:1 18:9 26:13 times 4:17,19,20 10:4 today 24:19 Toledo 1:14 2:4,14 25:21 27:2 </p>	<p> U Uh-huh 16:11,13 underground 4:22 5:22 understand 6:13 16:2 understanding 14:16,17 16:17 UNITED 1:1 University 5:7,9 USA 7:1,2 use 6:22 7:23 11:5 </p>	<p> 1 1 3:11 10 5:20 13:22 11 3:11 11:30 1:11 12-and-a-half 5:15 12.1 16:10 12:00 24:23 13th 27:3 16 3:6,10 5:21 18 3:10 5:21 19 3:11,11 191 2:9 </p>
	<p> V varies 11:7 various 7:24 vehicle 11:24 12:1 version 12:3 versions 12:13 vice 6:24 17:19 23:4 videos 10:11 violation 18:14 21:15 visits 14:2 VPs 6:20 vs 1:5 vulnerable 15:20 </p>	<p> 2 2 14:10,23 15:2,12,16 17:23 18:12 2:12-CV-00613 1:5 2003 5:14 6:5 2015 1:11 25:2 27:3 2020 27:9 24 10:24 11:6 24th 2:13 241-6000 2:14 25 4:19,20 255-1010 25:21 26 5:19 </p>
	<p> W waive 24:14,14 walking 13:10 want 24:11,13,14 way 11:14 21:21 Weiner 23:14 West 2:9 WESTERN 1:2 we'll 6:17 11:18 20:14 we're 10:20 12:19 we've 12:23 WHEREOF 27:1 wholly 18:23 within-named 26:5 witness 3:3 4:2 18:18 19:2,12 24:16 24:22 26:5,9 27:1 work 6:5 7:11 worked 5:12,17 working 5:3 6:15 8:12 workplace 16:18 Worksheet 25:22 world 6:19,20 7:14 8:3 23:11 W-e-i-n-e-r 23:14 </p>	<p> 3 3 3:6 16:5,9 30,000 9:20 300 2:9 3516 1:13 2:4 </p>
	<p> 4 4 3:3 405 25:20 419 2:5,14 25:21 43215 2:9 43604 2:14 25:21 43617 1:14 2:4 </p>	<p> 5 5 3:3 27:9 </p>
	<p> 6 6 1:11 25:2 614 2:10 628-6880 2:10 </p>	<p> 7 7 3:6 16:6,8 20:9,17 21:2 24:4 </p>
	<p> 8 8 16:6 80s 23:24 843-2001 2:5 </p>	